

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TODD MERCER and SHAWNEE MERCER,	*	
	*	
Plaintiffs,	*	No.
	*	
v.	*	
	*	JURY DEMANDED
CIRCLE K STORES, INC.	*	
and ABC CORPORATION,	*	
	*	
Defendants.	*	

NOTICE OF REMOVAL

Without waiving any available defenses, including, without limitation, lack of personal jurisdiction, improper venue, statute of limitations, insufficient process, or insufficient service of process, Defendant Circle K Stores, Inc. (“Circle K”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this Notice of Removal of the above-described action to the United States District Court for the Northern District of Georgia, Atlanta Division, from the State Court of Gwinnett County, Georgia where the action is now pending and states as follows:

1. The Plaintiffs, Todd Mercer and Shawnee Mercer (“Plaintiffs”), commenced this action in the State Court of Gwinnett County, Georgia on October 11, 2022 and process was served on Circle K on October 19, 2022. A copy of Plaintiffs’ Complaint setting forth the claim for relief upon which the action is based

was first received by the Circle K on October 19, 2022. Circle K timely answered Plaintiffs' Complaint on November 18, 2022. At the time the Complaint was served on Circle K, and within thirty (30) days thereafter, the case was not subject to removal pursuant to 28 U.S.C. §§ 1332 and 1446(b)(1) as the amount in controversy was not capable of determination.

2. This is a civil action for damages arising out of alleged injuries sustained by Plaintiff in a slip and fall incident on January 23, 2022 at the Circle K gas station located at 5646 Hwy 20 SE, Cartersville, Georgia 30121.

3. The United States District Court for the Northern District of Georgia, Atlanta Division, has jurisdiction by reason of the diversity citizenship of the parties. 28 U.S.C. § 1332.

4. This is a suit between citizens of different states. At the time they commenced this action and at all times thereafter, Plaintiffs were and continue to be citizens and residents of Fayette County, Georgia.

5. Circle K is a Texas corporation with its principal place of business in Arizona. Therefore, Circle K is a citizen of Texas and Arizona and not a citizen of Georgia.

6. In this action, Plaintiff Todd Mercer alleged he "suffer[ed] serious injuries from the fall" at Circle K. (Compl. ¶ 13).

7. Plaintiff Todd Mercer seeks to recover "not less than \$22,659.00"

against Circle K. (Compl. ¶ 13).

8. Plaintiff further seeks compensation for “suffer[ing] physical and mental injuries, including but not limited to, bodily injuries, permanent impairment and damages, past, present, and future pain and suffering, mental anguish, loss of enjoyment of life, and other damages” as a result of Circle K’s negligence. (Compl. ¶ 13).

9. Plaintiff Shawnee Mercer seeks to recover damages because her “marital relationship [with Plaintiff Todd Mercer] was negatively impacted” as a result of Circle K’s negligence. (Compl. ¶ 16).

10. On January 25, 2023, Plaintiff Todd Mercer responded to Circle K’s discovery requests by itemizing “24,058.50+” in past medical expenses. (*See*, Plaintiff Todd Mercer’s Discovery Responses, ¶ 5, attached hereto as **Exhibit A**).

11. Plaintiff’s itemization denoted that “Future Medical Costs” are “TBD,” meaning his special damages will continue to rise. *Id.*

12. Plaintiff Todd Mercer claims he suffered “back pain, wrist pain, small contusion on head, concussion, left rotator cuff injury, and left wrist fracture” as a result of the fall at Circle K. *Id.* at ¶ 16.

13. Plaintiff Todd Mercer “has been advised by his medical providers that he will need surgery to correct his injuries.” *Id.*

14. Circle K is not presently aware of any single surgery that can correct or

address “back pain, wrist pain, small contusion on head, concussion, left rotator cuff injury, and left wrist fracture.” *Id.* As a result, Plaintiff Todd Mercer is likely to undergo several surgeries so as to comprise his “TBD” amount of “Future Medical Costs.” *Id.* at ¶ 5.

15. Taken together, it is more likely than not, based on Plaintiffs’ description of the alleged damages in their Complaint, including physical and mental injuries, including but not limited to, bodily injuries, permanent impairment and damages, past, present, and future pain and suffering, mental anguish, loss of enjoyment of life, loss of consortium, the 24,058.50+ in medical expenses to date, and the future surgical recommendations, the amount in controversy of Plaintiffs’ claims exceeds \$75,000.00, exclusive of interest and costs. Accordingly, the jurisdictional amount is satisfied in this case.

16. In addition, removal is timely pursuant to 28 U.S.C. § 1446(b)(3) as Plaintiffs’ discovery responses of January 25, 2023 constitute “other paper . . . [that] unambiguously establish[es] federal jurisdiction.” *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1212 n.62, 1213 (11th Cir. 2007) (noting that interrogatory responses qualify as other paper for federal jurisdiction purposes).

17. A copy of all pleadings and Orders served upon Circle K is filed with this Notice and attached hereto as **Exhibit B**.

18. Circle K will give written notice of the filing of this Notice as required

by 28 U.S.C. § 1446(d).

19. A copy of this Notice will be filed with the Clerk of the State Court of Gwinnett County, Georgia as required by 28 U.S.C. § 1446(d).

WHEREFORE, Circle K requests that this action proceed in this Court as an action properly removed to it pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

This 21st day of February, 2023.

Respectfully submitted,

CARR ALLISON

By: /s/ Sean W. Martin
SEAN W. MARTIN, GA BAR #474125
STEPHEN A. SWANSON, GA BAR #759751
Attorneys for Defendant Circle K Stores, Inc.
736 Market St., Suite 1320
Chattanooga, TN 37402
(423) 648-9832 / (423) 648-9869 FAX
swmartin@carrallison.com
sswanson@carrallison.com

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify the foregoing document complies with the font and point selections permitted by Local Rule 5.1(B). This document was prepared on a computer using Times New Roman font in 14 point.

This 21st day of February, 2023.

By: /s/ Sean W. Martin
SEAN W. MARTIN, GA BAR #474125
STEPHEN A. SWANSON, GA BAR #759751

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Jordan M. Jewkes, Esq.
Ava K. Standard, Esq.
The Jewkes Firm, LLC
P.O. Box 2593
Peachtree City, GA 30269

CARR ALLISON

By: /s/ Sean W. Martin
SEAN W. MARTIN, GA BAR #474125
STEPHEN A. SWANSON, GA BAR #759751